

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THE ESTATE OF ERIK A. POWELL,) Civil No.
THROUGH PERSONAL REPRESENTATIVE) CV04-00428LEK
MARY K. POWELL; THE ESTATE OF)
JAMES D. LAUGHLIN, THROUGH PERSONAL)
REPRESENTATIVE RAGINAE C. LAUGHLIN;)
MARY K. POWELL, INDIVIDUALLY;)
RAGINAE C. LAUGHLIN, INDIVIDUALLY;)
CHLOE LAUGHLIN, A MINOR, THROUGH)
HER NEXT FRIEND, RAGINAE C.)
LAUGHLIN,)

Plaintiffs,)

vs.)

CITY AND COUNTY OF HONOLULU,)

Defendant,)

and)

CITY AND COUNTY OF HONOLULU,)

Third-Party Plaintiff,)

vs.)

UNIVERSITY OF HAWAII, a body)
corporate; JOHN DOES 1-10, JANE)
DOES 1-10; DOE CORPORATIONS and)
DOE ENTITIES,)

Third-Party Defendants.)

DEPOSITION OF DANIEL NEVES

Taken on behalf of Plaintiffs at the Law Offices
of Ian L. Mattoch, 737 Bishop Street, Suite 1835,
Honolulu Hawaii, commencing at 2:00 p.m. on March
24, 2006, pursuant to Notice.

Before: WILLIAM T. BARTON, RPR, CSR NO. 391

EXHIBIT "25"

Page 86

1 Q. Is that considered Zone 2?
2 A. Past the reef is considered Zone 2 over
3 here, yes.
4 Q. You're indicating the reef on the photo,
5 which is --
6 A. See how the waves break on the reef?
7 Q. Which is where the whitewater is on this
8 photo?
9 A. This is a nice day. You imagine a bad
10 day, with real whitewater.
11 Q. On a rougher day, the whitewater would
12 cover all the reef area?
13 A. On a good day, I could surf from here
14 and end up here.
15 Q. You're pointing from Witches Brew, all
16 the way to Back Door?
17 A. Correct.
18 Q. Just to note, off the record, I asked
19 you to mark some things on this photo.
20 I asked you to circle the tower, which
21 is 3 Alpha. And that's the tower where you were
22 working when you first saw the first victim; is
23 that right?
24 A. Correct.
25 Q. You drew a circle around that; is that

Page 87

1 right?
2 A. Yes.
3 Q. You also drew two parallel lines in the
4 ocean, indicating where the Slot is; is that
5 right?
6 A. Right.
7 Q. You also drew a "1" over by the Witches
8 Brew point.
9 And what does that one indicate?
10 A. That indicates where I seen him from the
11 tower.
12 Q. That's the first victim?
13 A. Correct.
14 Q. That's where you saw him swimming in the
15 water?
16 A. Correct.
17 Q. The number "2," what does that indicate?
18 A. That indicates the place where I got him
19 in the water. I reached him in the water.
20 Q. And then that's when you first had
21 contact?
22 A. Correct, doing mouth-to-mouth, in that
23 area right there.
24 Q. Number "3" indicates what?
25 A. That is where I put him up on the ledge

Page 88

1 and doing CPR on him with Clarence Moses and Ron
2 Bregman.
3 Q. The other thing I want you to do is draw
4 a line, basically showing your path of travel to
5 get to where you jumped into the water.
6 A. (Indicating.)
7 Q. Can you just put a sort of dot where you
8 jumped in?
9 A. (Indicating.)
10 Q. You just drew a line from 3 Alpha to the
11 dot, almost at the end of the point?
12 A. Correct.
13 Q. That's the path of travel you took?
14 A. Correct.
15 Q. Thank you. Before these accidents, did
16 you personally ever make any suggestions as to
17 other things that the Hanauma Bay lifeguards could
18 do to make it safer?
19 A. To C-Mo, yes. But as a contract, I
20 would have been fired already.
21 Q. Okay. Do you know whether C-Mo,
22 Clarence Moses, also made suggestions, prior to
23 these drownings?
24 A. Many times, I think probably 30 years
25 full of suggestions.

Page 89

1 Q. Do you know what the suggestions were?
2 A. I do not know exactly what he --
3 throughout the 30 years. But I know all of them
4 were declined.
5 Q. Were you ever present when he made
6 suggestions?
7 A. Yes. And the meeting on the next day,
8 he did make suggestions. He did make suggestions
9 about the buoys, instead of putting one buoy out
10 there, let's put five buoys, so it looks like a
11 barricade, not a possible floating device.
12 Q. Were you aware of any suggestion ever
13 being made that there be more lifeguard towers in
14 any area of the bay?
15 A. Always. That's why nobody wants to work
16 there.
17 Q. Because?
18 A. Because it's one man for himself.
19 Q. Is it your opinion that the bay was
20 understaffed as of that date of these drownings?
21 A. The bay is still understaffed.
22 Q. And what is your understanding of how
23 many lifeguards there should be?
24 A. 25 people per lifeguard.
25 Q. What's that based on?

Page 90	Page 92
<p>1 A. That's based on the USLA handbook.</p> <p>2 Q. The United States Life Saving</p> <p>3 Association manual?</p> <p>4 A. Correct.</p> <p>5 Q. What about any towers -- was it ever</p> <p>6 suggested there be a tower at the Witches Brew</p> <p>7 point?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know who made that suggestion?</p> <p>10 A. Clarence.</p> <p>11 Q. Do you know about when?</p> <p>12 A. I do not.</p> <p>13 Q. Do you know if it was a suggestion that</p> <p>14 was made prior to these drownings?</p> <p>15 A. I couldn't say.</p> <p>16 Q. Did you discuss these types of</p> <p>17 precautions with Clarence, prior to these</p> <p>18 drownings?</p> <p>19 A. Every day, we prep each other of what we</p> <p>20 were going to do if the situation happens, and</p> <p>21 what we need to do, yes.</p> <p>22 Q. Did you ever talk to C-Mo prior to these</p> <p>23 drownings about we need more lifeguards, about we</p> <p>24 need more towers?</p> <p>25 A. No. Because it didn't matter. It</p>	<p>1 out, you know, what's going on. And just, you</p> <p>2 know, preventive.</p> <p>3 But Hanauma Bay is a preservation place</p> <p>4 that is dead. Not alive. There's no reef life</p> <p>5 there. And they were trying to abide by the</p> <p>6 preservation, whatever, of not bringing a jet ski.</p> <p>7 But I know it's been mentioned quite a</p> <p>8 few times, and rejected.</p> <p>9 Q. And this is based on your own personal</p> <p>10 opinion. But what precautions could have been in</p> <p>11 place on the day of these drownings that you think</p> <p>12 would have, perhaps, prevented?</p> <p>13 MR. MAYESHIRO: Lacks foundation.</p> <p>14 A. If we had a patrol guy that was at least</p> <p>15 patrolling the areas.</p> <p>16 Q. On foot?</p> <p>17 A. On foot. We would have two live people.</p> <p>18 Q. And what about having more lifeguards</p> <p>19 visually scanning? Do you think that would have</p> <p>20 made a difference?</p> <p>21 A. Well, of course. Two eyes are better</p> <p>22 than one, right?</p> <p>23 Q. And of the men who you worked with on</p> <p>24 that day, do you still feel very close to them?</p> <p>25 A. Yes. Everybody. And I see them</p>
Page 91	Page 93
<p>1 doesn't matter what I say, because I said, I'm a</p> <p>2 contract.</p> <p>3 I mean, if I say anything, because my</p> <p>4 shoulder is hurting or my vision is bad or because</p> <p>5 of lifeguarding, I can get fired.</p> <p>6 And I couldn't -- I could afford it, but</p> <p>7 I didn't want it, because I love my job, to help</p> <p>8 people.</p> <p>9 Q. But you're aware that Clarence Moses had</p> <p>10 made these recommendations?</p> <p>11 A. For the longest of times. And he should</p> <p>12 have them all written down on paper.</p> <p>13 Q. Are you aware if one of the suggestions</p> <p>14 was made prior to these drownings that there be a</p> <p>15 jet ski on site?</p> <p>16 A. That was always up in the air.</p> <p>17 Q. What do you mean?</p> <p>18 A. That was always like something they were</p> <p>19 talking about. But for pollution wise and so</p> <p>20 forth, it was never saw through.</p> <p>21 Q. What is your personal opinion as to what</p> <p>22 function the jet ski would serve if it were</p> <p>23 permanently at Hanauma Bay?</p> <p>24 A. Well, it would be to, you know, to</p> <p>25 circle around, make sure everybody's okay. Find</p>	<p>1 regularly.</p> <p>2 Q. And you said you loved being a lifeguard</p> <p>3 for the City and County?</p> <p>4 A. That was my life.</p> <p>5 Q. What about it did you love?</p> <p>6 A. What did I love about it? Helping</p> <p>7 people. Getting paid nothing to help somebody.</p> <p>8 You know, the ability to help people in a certain</p> <p>9 way that they will never forget is a good feeling.</p> <p>10 Q. Do you know if lifeguards are trained to</p> <p>11 speak foreign languages --</p> <p>12 A. No.</p> <p>13 Q. Do you personally speak?</p> <p>14 A. Yeah, I speak Korean, Japanese. I speak</p> <p>15 a little bit of Russian. I speak all the</p> <p>16 languages that they needed down there. That's why</p> <p>17 they put me down there.</p> <p>18 Q. Are you involved in any other lawsuits</p> <p>19 that you're aware of?</p> <p>20 A. No.</p> <p>21 Q. You said you were terminated in November</p> <p>22 of 2002?</p> <p>23 A. Correct.</p> <p>24 Q. And do you know if that was performance</p> <p>25 based?</p>